

Russell S. Thompson, IV (029098)
Joseph Panvini (028359)
Thompson Consumer Law Group, PLLC
5235 E. Southern Ave., D106-618
Mesa, AZ 85206
Telephone: (602) 388-8898
Facsimile: (866) 317-2674
rthompson@ThompsonConsumerLaw.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kimberly Driesen, *on behalf of herself and* Case No.
all others similarly situated,)

Plaintiff,)

vs.)

RSI Enterprises, Inc.,)

Defendant.)

**COMPLAINT AND TRIAL BY JURY
DEMAND**

NATURE OF ACTION

1. Plaintiff Kimberly Driesen (“Plaintiff”) brings this class action on behalf of herself and all others similarly situated against Defendant RSI Enterprises, Inc. (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

1 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the
2 acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff
3 resides in this district, and where Defendant transacts business in this district.
4

5 4. Congress is “well positioned to identify intangible harms that meet minimum
6 Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable
7 injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Spokeo, Inc.*
8 *v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016) (quoting *Lujan v. Defs of*
9 *Wildlife*, 504 U.S. 555, 578 (1992)).
10

11 5. “Without the protections of the FDCPA, Congress determined, the
12 ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect
13 consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467,
14 at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a debt collector’s
15 breach of a right afforded a consumer under the FDCPA causes an injury in fact for Article
16
17 III standing, even where the harm may be intangible. *See id.*; *Church v. Accretive Health,*
18 *Inc.*, 654 F. App’x 990, 995 (11th Cir. 2016).
19
20

21 **THE FAIR DEBT COLLECTION PRACTICES ACT**

22 6. Congress enacted the FDCPA in order to eliminate “abusive debt collection
23 practices by debt collectors [and] to insure that those debt collectors who refrain from using
24 abusive debt collection practices are not competitively disadvantaged.” *Clark v. Capital*
25 *Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing 15 U.S.C.
26 § 1692(e)).
27
28

1 7. To protect consumers and ensure compliance by debt collectors, “the FDCPA
2 is a strict liability statute.” *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d
3 939, 948 (9th Cir. 2011).

4
5 8. Strict liability enhances “the remedial nature of the statute,” and courts are
6 “to interpret it liberally” to protect consumers. *Clark*, 460 F.3d at 1176.

7
8 9. In addition, by making available to prevailing consumers both statutory
9 damages and attorneys’ fees, Congress “clearly intended that private enforcement actions
10 would be the primary enforcement tool of the Act.” *Baker v. G.C. Servs. Corp.*, 677 F.2d
11 775, 780-81 (9th Cir. 1982); *see also Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109,
12 1118 (9th Cir. 2014).

13
14 10. Violations of the FDCPA are assessed under the least sophisticated consumer
15 standard which is “‘designed to protect consumers of below average sophistication or
16 intelligence,’ or those who are ‘uninformed or naïve,’ particularly when those individuals
17 are targeted by debt collectors.” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061
18 (9th Cir. 2011) (quoting *Duffy v. Landberg*, 215 F.3d 871, 874-75 (8th Cir. 2000)).

19
20
21 11. “An FDCPA Plaintiff need not even have actually been misled or deceived
22 by the debt collector’s representation; instead, liability depends on whether the
23 *hypothetical* ‘least sophisticated debtor’ likely would be misled.” *Tourgeman*, 755 F.3d at
24 1117-18 (emphasis in original).

25
26 12. “[B]ecause the FDCPA is a remedial statute aimed at curbing what Congress
27 considered to be an industry-wide pattern of and propensity towards abusing debtors, it is
28 logical for debt collectors—repeat players likely to be acquainted with the legal standards

governing their industry—to bear the brunt of the risk.” *Clark*, 460 F.3d at 1171-72; *see also FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 393 (1965) (“[I]t does not seem unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.”) (internal quotations omitted).

PARTIES

13. Plaintiff is a natural person who at all relevant times resided in the State of Arizona, County of Mohave, and City of Fort Mohave.

14. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

15. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

16. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

17. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendant.

18. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, personal medical services (the “Debt”).

19. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts.

1 20. Defendant regularly collects or attempts to collect, directly or indirectly,
2 debts owed or due, or asserted to be owed or due, another.

3
4 21. In connection with the collection of the Debt, Defendant called Plaintiff on
5 February 27, 2018, at approximately 10:12 a.m.

6 22. At that time, Defendant left Plaintiff the following voicemail message: “We
7 have an important message from RSI Enterprises. This call is from a debt collector. Call
8 602-627-2301. Thank you.”

9
10 23. Plaintiff listened to and heard the message on February 27, 2018.

11 24. The February 27, 2018 message was Defendant’s initial communication with
12 Plaintiff with respect to the Debt.

13
14 25. Defendant did not disclose in its message that it was attempting to collect a
15 debt and that any information obtained would be used for that purpose.

16
17 26. It was not until a subsequent written communication that Defendant made
18 that disclosure, when several days later Plaintiff received a letter from Defendant dated
19 February 27, 2018.

20
21 27. A different employee of Defendant called Plaintiff a second time later on
22 February 27, 2018, at approximately 11:18 a.m.

23 28. At that time, Defendant left Plaintiff the following voicemail message: “We
24 have an important message from RSI Enterprises. This is a call from a debt collector. Please
25 call 602-627-2301. Thank you.”

26
27 **CLASS ACTION ALLEGATIONS**

28 29. Plaintiff repeats and re-alleges all factual allegations above.

1 30. Defendant's February 27, 2018 messages are based on a script or template
2 used by Defendant's employees to leave voicemail messages for debtors (the "Template").
3

4 31. Upon information and belief, Defendant's employees are instructed to follow
5 the Template each time he or she leaves a message for a debtor.

6 32. Upon information and belief, Defendant's employees follow this procedure
7 regardless of whether Defendant has delivered a letter to the consumer yet.
8

9 33. The Template fails to disclose that the call is an attempt to collect a debt and
10 that any information obtained would be used for that purpose, in the same manner as
11 Defendant did with Plaintiff above.
12

13 34. Defendant left messages based on the Template for over 40 individuals in the
14 State of Arizona within the year prior to the filing of the original complaint in this matter.
15

16 35. Plaintiff brings this action on behalf of herself and all others similarly
17 situated. Specifically, Plaintiff seeks to represent the following class of individuals:

18 All persons in Arizona, for whom Defendant left a voicemail message, based
19 upon the Template, within one year before the date of this complaint, in
20 connection with the collection of a consumer debt, and where Defendant
21 mailed the person any initial written correspondence dated the same day or
later than the message was left.

22 36. The class is averred to be so numerous that joinder of members is
23 impracticable.
24

25 37. The exact number of class members is unknown to Plaintiff at this time and
26 can be ascertained only through appropriate discovery.

27 38. The class is ascertainable in that the names and addresses of all class
28 members can be identified in business records maintained by Defendant.

1 39. There exists a well-defined community of interest in the questions of law and
2 fact involved that affect the parties to be represented. These common questions of law and
3 fact predominate over questions that may affect individual class members. Such issues
4 include, but are not limited to: (a) the existence of Defendant's identical conduct particular
5 to the matters at issue; (b) Defendant's violations of the FDCPA; (c) the availability of
6 statutory penalties; and (d) attorneys' fees and costs.
7

8
9 40. Plaintiff's claims are typical of those of the class she seeks to represent.

10 41. The claims of Plaintiff and of the class originate from the same conduct,
11 practice, and procedure on the part of Defendant. Thus, if brought and prosecuted
12 individually, the claims of the members of the class would require proof of the same
13 material and substantive facts.
14

15 42. Plaintiff possesses the same interests and has suffered the same injuries as
16 each class member. Plaintiff asserts identical claims and seeks identical relief on behalf of
17 the unnamed class members.
18

19 43. Plaintiff will fairly and adequately protect the interests of the class and has
20 no interests adverse to or which directly and irrevocably conflict with the interests of other
21 members of the class.
22

23 44. Plaintiff is willing and prepared to serve this Court and the proposed class.

24 45. The interests of Plaintiff are co-extensive with and not antagonistic to those
25 of the absent class members.
26

27 46. Plaintiff has retained the services of counsel who are experienced in
28 consumer protection claims, as well as complex class action litigation, will adequately

1 prosecute this action, and will assert, protect and otherwise represent Plaintiff and all absent
2 class members.

3
4 47. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and
5 23(b)(1)(B). The prosecution of separate actions by individual members of the class would,
6 as a practical matter, be dispositive of the interests of other members of the class who are
7 not parties to the action or could substantially impair or impede their ability to protect their
8 interests.

9
10 48. The prosecution of separate actions by individual members of the class would
11 create a risk of inconsistent or varying adjudications with respect to individual members of
12 the class, which would establish incompatible standards of conduct for the parties opposing
13 the classes. Such incompatible standards of conduct and varying adjudications, on what
14 would necessarily be the same essential facts, proof and legal theories, would also create
15 and allow the existence of inconsistent and incompatible rights within the class.

16
17 49. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
18 Defendant has acted or refused to act on grounds generally applicable to the class, making
19 final declaratory or injunctive relief appropriate.

20
21 50. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the
22 questions of law and fact that are common to members of the class predominate over any
23 questions affecting only individual members.

24
25 51. Moreover, a class action is superior to other methods for the fair and efficient
26 adjudication of the controversies raised in this Complaint in that: (a) individual claims by
27 the class members will be impracticable as the costs of pursuit would far exceed what any
28

one plaintiff or class member has at stake; (b) as a result, very little litigation has commenced over the controversies alleged in this Complaint and individual members are unlikely to have an interest in prosecuting and controlling separate individual actions; and (c) the concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy.

COUNT I
VIOLATION OF 15 U.S.C. § 1692e(11)

52. Plaintiff repeats and re-alleges each factual allegation above.

53. The FDCPA creates a broad, flexible prohibition against the use of misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. § 1692e; *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002) (citing legislative history reference to the FDCPA’s general prohibitions which “will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed”).

54. The FDCPA “provides a non-exhaustive list of conduct that is a violation of § 1692e, including: ‘The failure to disclose in the initial . . . communication with the consumer . . . that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.’” *Moritz v. Daniel N. Gordon, P.C.*, 895 F. Supp. 2d 1097, 1106 (W.D. Wash. 2012) (citing 15 U.S.C. § 1692e(11)).

55. A voicemail from a debt collector soliciting a return call is a communication, which must contain the disclosures required by 15 U.S.C. § 1692e(11). *Hart v. Credit Control, LLC*, 871 F.3d 1255, 1257-58 (11th Cir. 2017).

1 56. Defendant violated 15 U.S.C. § 1692e(11) by failing to disclose in its initial
2 communication with Plaintiff that the communication was an attempt to collect a debt and
3 any information obtained would be used for that purpose.
4

5 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 6 a) Determining that this action is a proper class action, certifying Plaintiff as a
7 class representative under Rule 23 of the Federal Rules of Civil Procedure,
8 and designating this Complaint the operable complaint for class purposes;
9
10 b) Adjudging that Defendant violated 15 U.S.C. § 1692e(11) with respect to
11 Plaintiff and the class she seeks to represent;
12
13 c) Awarding Plaintiff and the class she seeks to represent actual damages
14 pursuant to 15 U.S.C. § 1692k(a)(1);
15
16 d) Awarding Plaintiff such additional damages as the Court may allow in the
17 amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
18
19 e) Awarding all other class members such amount as the Court may allow,
20 without regard to a minimum individual recovery, not to exceed the lesser of
21 \$500,000 or one percent of the net worth of the debt collector, pursuant to 15
22 U.S.C. § 1692k(a)(2)(B)(ii);
23
24 f) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys'
25 fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and
26 Rule 23;
27
28 g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and
post-judgment interest as permissible by law; and

1 h) Awarding such other and further relief as the Court may deem proper.

2 **TRIAL BY JURY**

3
4 57. Plaintiff is entitled to and hereby demands a trial by jury.

5 Dated: June 27, 2018

6 Respectfully submitted,

7 s/ Russell S. Thompson, IV

8 Russell S. Thompson, IV (029098)

9 Thompson Consumer Law Group, PLLC

5235 E. Southern Ave., D106-618

10 Mesa, AZ 85206

11 Telephone: (602) 388-8898

Facsimile: (866) 317-2674

12 rthompson@ThompsonConsumerLaw.com

13 s/ Joseph Panvini

14 Joseph Panvini (028359)

15 Thompson Consumer Law Group, PLLC

5235 E. Southern Ave., D106-618

16 Mesa, AZ 85206

17 Telephone: (602) 388-8875

Facsimile: (866) 317-2674

18 jpanvini@ThompsonConsumerLaw.com

19 Attorneys for Plaintiff